Supplement to the Hawaiian Gazette, December 7, 1881.

Supreme Court of the Hawaiian Islands— Special Term, November 21, 1881.

H. A. P. CARTER, MINISTER OF THE IN-TERIOR VS. LOO NOAWE AND OTHERS-IN

Just C. J., McCally and Austin J. J .- Opinion of the Court by Austin J.

This is an action of debt on bond. The sole exception brought here for consideration by the defendant's counsel is, that "as appears " by the Marshal's return to the centre for the " term at which the case below was tried, the full number of jurors required by law had not " been summoved, and that talesman were sum-" moused in before the number of jurors re-"guired by law to be summoned for the said
"term had been summoned," and the jury on
the trial below was made up partly of said
talesman, and partly of other jurors summoved by the Marshal. And that the defeedants' counsel objected to the jury, and to moved by the Marshal. And that the defectants course objected to the jury, and to its being impanelled, on the ground aforesaid, and the court overruled the objection, and the defendants court overruled the objection, and the ndants' counsel duly excepted.

We are of opinion that the decision of the court below was right. Section "One" of Chapter "Seventeen" of the laws of 1870 p. 23, provides in substance, that each governor in concert with some judge of a court of record, in the mentis of March and September in each year, shall prepare a list of fifty native Hawaiians, and fifty other persons, being foreigners by birth or of foreign paroutage residing within their respective governatorial divisions, who in the opinion of such governor or judge, are fit to serve as jurors. It is not shown or claimed that this section of the statute was not complied with.

Section " Two " provides in substance, as applied to this case that the clerk of this ert, at least twenty days before the sitting of any court, shall draw from the appropriate bex the names of 24 native and 24 foreign jurous, which drawing shall be had in the presence of a justice of the Supremo Court or a Circuit Judge or the governor of the Island, who shall certify to the regularity of the pro-ceedings. It is not shown or claimed that this section of the statute was not followed.

Section "Four" provides in substance that each clerk shall transmit to the Marshal or Sheriff the names of the jurors drawn, within twenty four hours after they are drawn in order that such jurors may be duly summoned. This provision has also been complied with. The return of the Marshal shows that seven only out of forty-eight names of jurors the jurisdiction. This is the only defect which the later statute substitutes feet is in regard to a matter which must necessarily rest in uncertainty. In the first place the lists are drawn only once in six months for all the terms held in that time. It is likely that the condition of one or more of each list drawn will change before the time for the drawing of a new list. The list is of the drawing of a new list. The list is of the sewho, in the common of the judge or cov.

S. B. Dole for plaintiffs, those who, in the opinion of the judge or goverrow are fit to serve as jurors. This most necessarily be so everywhere. Also the list of jurors drawn must be subject to the changes which arise until the next drawing provided by law, and such changes ought not to affect the validity of any panel.

There is no law saying when the Marshal There is no law saying when the Marshal shall summon the jurors. In the absence of such a law it should be held that they were no be sammoned within a reasonable time before the term. Often this neight be only a day or even an hour.

This cantien is rendered necessary by reason of the content.

Section 1211 of the Civil Code, which is in force shows that it was contemplated that jurors might be so summoned. This section is as follows: "Every such juror if duly summoned at least 48 hours previous to the holding of the court, shall be punishable for non-attendance by fine not exceeding \$100 in the dis-cretion of the court for each day that he fails to attend without reasonable cause, and be may be brought up by summary attachment

There is no provision for any drawings of jurors except at the times or in the manner before stated. The drawing for the term to only a highly imp if the exception is to prevail it will come to this, that many times, and perhaps ninety-nine times in a hundred, owing to the uncertainties of human life and human affairs, among forty-eight men selected to be summoned, or one

LAWRENCE MCCULLY, BENJ. H. AUSTIN, Mr. Armstrong (Ant'y-Gen'i) for Plaintiff. A. S. Hertwell, Att'y for Defendants. Benoloin, December 2d, 1881.

Supreme Court of the Hawaiian Islands-Special Term. Nov., 1881.

THUMAS MARTINASON VS. NAHOA- IN BANCO.

Judd C. J., McCally and Austin J. J .- Opinion by McCally J.

The case comes by appeal from a pro-formal judgment of the Circuit Court of the Third Judicial Circuit, on agreed statements, to the effect (1) that the defendant was under a servant's contract to labor for the plaintiffs, executed prior to the Act of 1880, ch. 21, and to by controlled by the Act of 1868, referred to below: (2) to at the contract was executed in the Hawaiian language only; (3) that the plaintiffs and defendant are of Hawaiian

birth and descent. The controversy is whether the defendant is bound by his contract, in view of the following provision of the Act of 1808, June 23rd, FIREINSURANCE COMPAN to regulate contracts between Masters and Servants. "Section L. All contracts for service between masters and servants, where either of the contracting parties is of Hawaiian tarth, shall be written and printed in both the Hawoiian and English languages. No such contracts shall have effect in law when execu-

ted in one language only. What effect has this upon a contract executed in the Hawaiian language only, when all parties are Hawaiians?

Section 12 of the Civil Code embodies a wellknown rule of construction in these terms. "One of the most effectual ways of discovone at the most effectival ways of discovering the true meaning of a law, when its expressions are dubious, is by considering the reason and spirit of it, or the cause which induced the Legislature to enact it."

The reason and spirit of this law are obvi-

ons to us. Under previous legislation a con-miderable portion of the Hawaiian male popu-lation were bound by labor contracts, for the most part made with residents not of Hawaiian hirth, and not written or printed in the Ha-wailan language, and this statute was enacted to secure, especially to the Hawailan contracting party, a contract which he might know the terms of as to place, time of service, wages, whether with or without board, hours of ser-vice, etc., in all of which particulars he might be or claim to be misinformed, if his contract
was drawn in the English language.

This was the evil to be remedied. The law

This was the evil to be remedied. The law

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by requiring that the contract shall be also ex-ecuted in the English language, and this Court has held in Unna vs. Kealaula, 3rd Hawaiian Reports 690, when only one party was a Hawaiian that each version of the contract, Ha-waiian and English must be signed by both parties, and the Hawaiian party may claim the invalidation of his contract when it is not ex-ecuted in English as well as in his own language. The statute admits no other construction of the phrase "when either of the con-tracting parties is of Hawaiian birth."

The word "either" is a distributive or al-ternative term. It carries the meaning that when one of the parties is of Hawaiian birth and the other is not, such, contract shall be executed in Hawaiian and English. The negative or excluding force of the word either is equal to its affirmation and including force. For the application of the statute one party must be not Hawaiian, and for him the English For the application of the statute on contain. Two cases would have been pro vided for, namely the case of one party being Hawaiian and the other not, and the case of both being Hawaiians. The effect given to

the statute by the court below requires words which are not in it. The term "either" does not include "both," nor does "both" the greater intend and therefore include the less, "either." But some doubt has been thrown on the construction we give to the Act of 1868, by

the amendment made to it in 1880, which ennets that the section read as follows: tion I. All contracts for service betwee Masters and Servants, where only one of the parties is a native Hawaiian, shall be written or printed in both the Hawaiian and English inguages. No such contract shall have any effect in law when executed in one language only, provided that nothing herein conta shall be held or construed to prevent any such contracts being written or printed in the Hawaiian language only when both parties there-to are native Hawaiians."

This simply substitutes "only one" for "either," and adds a proviso against construing "only one" to mean "both."

In our view the statute of 1868 expressed

the same thing. It is not a necessary inference that it did not, because it is here enacted in other terms. The reason of the amendment appears in the proviso against a construction which might be made, and, as in the case before us has been made, from a failure furnished, were not summoned, because beyond to properly construe the term "either," for claimed by the defendants coursel. This dofrom abundant caution further declares that this is not to be held to mean both. It is an explanatory statute. Judgment for the plaintiffs and the like

jadgment in the several cases submitted at the same time between the same plaintiffs and Honolulu, Dec. 2, 1881.

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times in a hundred, ewing to the uncertainties of human life and human affairs, among fortyeight men selected to be summoned, or one hundred men selected as fit for jurors, a term appointed to be ledd, for which parties and witnesses and counsel and judges are ready, will fail through, and we shall be obliged to appoint extraordinary terms, subject again to be defeated by new changes in the lists drawn and sent out to be summoned.

It has been suggested by counsel that a provision should be added to the law requiring the jurors to be summoned a definite number of days before the term. Even this would not more want the public extraordinary terms, subject again to find the provision should be added to the law requiring the jurors to be summoned a definite number of days before the term. Even this would not more extraordinary returns the summoning of a full jury list. At any moment death might come in and prevest it. No amendment could be made by which one or over seven jurors, out of a list of farty-eight jurors, might not more essarily returns the summoned on the first day of term.

The decision in the case of the King vs. Henry Cornwell, 3 Hawn. R. p. 164, is not in point against the view of the court here. In that case the panel was quashed because the jury had not been drawn and summoned according to law. In this case the jury were properly summoned.

Having decided the question upon its merits, without reference to the legal formulity of the objection taken, we deem it unnecessarily to consider the effect of rule 25 cited by the Altonies-General. Exceptions overruled.

A Francis Jurn, Lawnence McCully, Lawnence McCully, and her and propose we have seen language and any one and only the property summoned.

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